

In re) Fair Hearing No. 20,572
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Appeal of)

The petitioner appeals the decision by the Department for Children and Families denying his application for Medicaid. The issue is whether petitioner meets the disability criteria for Medicaid.

1. The petitioner is a single father of two minor children. His children's medical needs are covered by the Dr. Dynasaur program. The petitioner is presently forty-five years of age. Petitioner has a Bachelor of Science degree and is trained as a network and pc support specialist.

2. Petitioner received Medicaid during a period in which he received Supplemental Security Income (SSI) disability benefits. Petitioner's medical condition will be more fully set out below.

Individuals receiving SSI are categorically eligible for Medicaid. The records indicate that petitioner received SSI disability benefits for a number of years. Department

records indicate petitioner became eligible for Medicaid on or about June 1, 1992 due to receipt of SSI. Records indicate that petitioner's SSI was closed on or about March 31, 2003. Petitioner then became eligible for Medicaid under the working disabled rules for the period of April 1, 2003 through June 30, 2005.

3. Petitioner continued to receive Medicaid as a disabled person whose income was less than the protected income level (PIL) from July 1, 2005 until October 9, 2006. The Department notified petitioner during mid 2006 that they needed to review whether petitioner continued to be disabled. The Disability Determination Unit (DDU) determined that petitioner was not disabled and could return to his prior work. Petitioner was sent a notice dated October 10, 2006 terminating his Medicaid on October 31, 2006. Petitioner filed a timely appeal and his benefits have continued.

4. Petitioner's case was delayed by the need to obtain medical records through the auspices of OVHA and the scheduling of an Independent Medical Examination. His case is further complicated by a number of factors including how to factor in petitioner's work attempts during this period.

5. At present, petitioner receives \$2,465.32 per month from worker's compensation. Petitioner's income is within

the eligibility limits for the Vermont Health Access Program (VHAP) for a three person household. Petitioner's income exceeds the PIL of \$950 per month¹. To qualify for Medicaid, petitioner needs to show that he is disabled and that his income is below the PIL. If a disabled person has income above the PIL, the Medicaid program allows a spend down of medical expenses. In petitioner's case, petitioner would need to meet a spend down before Medicaid benefits would kick in if petitioner is considered disabled.²

6. Petitioner was in a serious motor vehicle accident in 1989. He had L4-5 disc surgery in 1991. His earlier period of disability relates to his back problems and pain. Petitioner's back pain became manageable after the surgery. Petitioner was in another motor vehicle accident during 2005 that exacerbated his back problems and pain management.

7. Petitioner was employed as a PC support person from May 1999 until May 2007. Petitioner's job duties included answering computer questions, solving hardware and software problems, and upgrading computer systems. Petitioner lifted items weighing less than ten pounds such as laptops and portable printers. Petitioner had difficulty lifting items

¹ The PIL as of January 1, 2008 for an one person household.

² Petitioner was given the option of foregoing the Medicaid appeal and applying for VHAP but declined to do so.

weighing more than ten pounds such as computer monitors and needed his co-workers to lift the monitors and other equipment for him. Petitioner was unemployed for several months before being hired by another company as a PC support person for in August 2007. Petitioner was able to work during the period between his two jobs. Petitioner injured his knee on the job on or about November 16, 2007 and was diagnosed with a meniscal tear of his right knee. Petitioner receives worker compensation as a result of this injury. Petitioner has not worked since November 6, 2007.

8. Petitioner's medical records document ongoing pain management issues involving his lower back from mid 2005 until the present including periodic visits to the emergency room for acute pain. The medical records include:

- (1) April 2005 MRI and X-rays showing decreased L5-S1 disc space, no stenosis or impingement.
- (2) Emergency Room visits for acute back pain on July 5, 2005; June 6, 2006; July 26, 2006; November 12, 2006; July 8, 2007; and August 9, 2007.
- (3) X-ray on February 6, 2006 documented minimal L5-S1 degenerative changes.
- (4) Records from the Pain Clinic in 2005 and 2006 indicating different attempts to manage petitioner's pain including nerve block injections, pain medications, referrals to physical therapy, and psychological evaluation.

(5) Ongoing treatment by his family doctor, Dr. M including pain medications.

9. The record supports petitioner's position that he suffers from chronic back pain. The record indicates that petitioner engaged in substantial gainful activity from the proposed closure of his Medicaid on October 31, 2006 until May 2007 and from August 2007 until November 2007 despite his chronic back pain.

10. Petitioner receives care for a right meniscal tear through Associates in Orthopedic Surgery. The meniscal tear is a work-related injury from November 16, 2007. A MRI documented degenerative lateral meniscus tear, medical meniscus tear and some ACL degeneration. Treatment has included medication and physical therapy. Petitioner has maintained good strength in his right leg. Petitioner is being scheduled for arthroscopic surgery.³ Petitioner's prognosis is for full recovery post surgery.

11. On or about April 21, 2008, petitioner had an independent medical consultation with Dr. A.R. Dr. A.R. noted that his physical examination did not include petitioner's right leg due pain from the meniscal tear. Dr. A.R. found that petitioner does not have marked pain

³ Surgery has been scheduled several times over the past six months. At hearing, petitioner stated surgery was rescheduled for mid November.

behavior, has normal upper extremity function, has some tenderness to the right sacroileal area, and has guarded range of motion. Dr. A.R. stated that petitioner has long established back pain mainly controlled by analgesics. He found that the problem with the right knee is temporary.

12. Petitioner testified at hearing. He is concerned about keeping medical coverage due to his longstanding problems with back pain. Petitioner testified that he has tried different treatments for pain including physical therapy and injections. Taking pain medications has been the solution that works best for petitioner. During the hearing, petitioner regularly alternated sitting and standing for approximately fifteen minutes which he ascribed to pain. Petitioner stated that pain affects his concentration. Petitioner stated that his children help with laundry and his friends help with cleaning and heavy tasks.

13. P.G. testified; she has been petitioner's friend since 1991. She has organized people to help petitioner with cleaning and with home repairs. During the past summer, P.G. saw petitioner often. She has seen petitioner grimace in pain on many occasions.

ORDER

The Department's decision is affirmed.

REASONS

Petitioner's eligibility for Medicaid was last based upon Medicaid for Working People with Disabilities. To be eligible, an individual must be disabled and meet the other eligibility criteria found at M200.24(b). These criteria include a provision that the individual have income less than the PIL after disregarding earnings. An individual's disability status can be periodically reevaluated.

The Department's review started while petitioner was still employed. The Department's question was whether petitioner continued to be disabled. In one sense, inquiry under the Medicaid for Working People with Disabilities Program is moot as petitioner is no longer working and he would not be considered for that particular Medicaid group.⁴

The Medicaid rules state that if an individual is no longer eligible for Medicaid under one group, the Department must consider whether the individual is eligible under another group.

⁴ The Department does not recoup continuing Medicaid benefits. Further, petitioner would have met the income guidelines for either VHAP or CHAP during the period he continued to be employed after the proposed closure date; VHAP and CHAP provide comparable medical coverage to Medicaid.

The Medicaid regulations set out eligibility criteria at M200 et seq. To qualify, individuals need to show that they are older than sixty-five years, blind, or disabled. To be considered disabled, the individual must be found disabled by DDU or must receive social security disability benefits.

M211.

The issue is whether petitioner meets the definition of disability. M211.2 defines disability as follows:

Individuals age 18 or older are considered disabled if they are unable to engage in any substantial gainful activity because of any medically determinable physical or mental impairment, or combination of impairments, that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not fewer than 12 months. To meet this definition, individuals must have a severe impairment, which makes them unable to do previous work or any other substantial activity which exists in the national economy. To determine whether individuals are able to do any other work, the disability determination unit considers their residual functional capacity, age, education, and work experience.

Further, the DDU are charged with making determinations consistent with the requirements of the Social Security Administration. M211.4.

The Social Security Administration uses a five step sequential outline to determine disability including:

1. Is the applicant working and performing substantial gainful activity?

2. If not, does the applicant have a severe impairment or combination of impairments?

3. If so, does the applicant's impairment(s) meet or equal a listed impairment?

4. If so, the claimant is disabled. If not, does the impairment(s) prevent him or her from performing past relevant work based on his or her residual functional capacity?

5. If not, then there is no disability. If yes, is the claimant prevented from doing other work based on his or her medical condition taking into account the claimant's residual functional capacity, age, education and work experience?

20 C.F.R. § 416.920.

From October 31, 2006 (proposed date of closure) until November 16, 2007, petitioner was engaged in substantial gainful activity and would not be considered disabled under step one. After petitioner was injured on the job, petitioner qualified for worker's compensation and was limited to sedentary work. Petitioner is not presently working and has not worked for the past twelve months.

Petitioner meets step two since he has a severe back impairment that impacts his ability to work. The petitioner also has a right meniscus tear that impacts his ability to work. But, neither his back impairment nor his torn meniscus meet or equal the listings the Social Security Administration

has promulgated.⁵ Petitioner does not meet the requirements of step 3.

The Department argues that petitioner has the residual functional capacity to return to his past work as a network and pc technician. The Department characterization of petitioner's past work is between the definition of sedentary

⁵ The listings for major dysfunction of a joint and disorders of the spine are:

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitations of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b:

OR

B. Involvement of one major peripheral join in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuroanatomic distribution of pain, limitations of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

and light work as petitioner lifted no more than twenty pounds on occasion.

Sedentary work is defined at 20 C.F.R. § 416.967 as:

...lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Based on the record, petitioner may not be able to return to his past work as the evidence indicates that he is unable to lift up to twenty pounds occasionally.

This case properly belongs at step 5. The question is whether the petitioner has the residual functional capacity to engage in sedentary work looking at his impairments, symptoms, age, education, and prior work history. Another way of looking at this case is whether petitioner is capable of performing other work given his condition. Having a medical condition is not the same as being disabled.

Although petitioner has a documented back problem and resulting pain, the documentation does not support a finding that his back problem is disabling.⁶ There is no evidence

⁶The meniscus tear is a temporary condition. Because there will not be ongoing issues, there is no necessity to consider whether the combined impacts of both conditions should be considered.

from his medical providers of nerve root involvement or nerve damage. His medical providers have not documented that he is unable to work due to his back condition and the resulting pain. The petitioner has worked in the past despite his back pain. Petitioner did not provide evidence that his back pain has changed from the period he was last employed during November 2007 until the present.

The petitioner has the residual functional capacity to engage in sedentary work. The Department's decision is affirmed. 3 V.S.A. § 3091(d), Human Services Board Rule 1000.4(D).

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